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Supreme Court, U.S.
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No. 97-608

In The

# Supreme Court of the United States

October Term, 1997

JOSEPH RICHARD REDNER,

*Petitioner,*

*vs.*

THE CITY OF TAMPA, FLORIDA, a Florida Municipal Corporation, and PAM IORIO, in her official capacity as Supervisor of Elections, Hillsborough County, Florida,

*Respondents.*

*On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Second District*

## RESPONDENTS' BRIEF IN OPPOSITION

JERRY M. GEWIRTZ
*Assistant City Attorney*
*Attorney for Respondents*
315 East Kennedy Boulevard
Fifth Floor, City Hall
Tampa, Florida 33602
(813) 274-8996

72288 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

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## QUESTIONS PRESENTED

Respondents, City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections, Hillsborough County, Florida, respectfully restate the questions presented as follows:

I. WHETHER THE IMPOSITION OF A ONE-YEAR ELECTOR REQUIREMENT IS CONSTITUTIONAL.

II. WHETHER UNDER THE FACTS OF THIS CASE THERE WAS A NEED FOR AN EVIDENTIARY HEARING.

## PARTIES TO THE PROCEEDINGS BELOW

Plaintiff: Joseph Richard Redner.

Defendants: City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections, Hillsborough County, Florida.

## TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED . . . . . i

PARTIES TO THE PROCEEDINGS BELOW . . . . . ii

TABLE OF CONTENTS . . . . . iii

TABLE OF AUTHORITIES . . . . . iv

STATEMENT OF THE CASE . . . . . 1

REASONS FOR DENYING THE WRIT . . . . . 5

POINT I: THE IMPOSITION OF A ONE YEAR ELECTOR REQUIREMENT IS NOT UNCONSTITUTIONAL. . . . . 5

POINT II: UNDER THE FACTS OF THIS CASE, THERE WAS NO NEED FOR AN EVIDENTIARY HEARING. . . . . 7

CONCLUSION . . . . . 9

## TABLE OF AUTHORITIES

CASES CITED: PAGE

Board of Commissioners of Sarasota v. Gustafson, 616 So.2d 1165 (Fla. 2d DCA 1993) . . . . . 5,6

Cafe 207, Inc. v. St. Johns County 856 F.Supp. 641 (M.D. Fla. 1994) . . . . . 8

City of Long Beach Resort v. Collins, 261 So.2d 498 (Fla. 1972) . . . . . 7

Daves v. City of Longwood, 423 F.Supp. 593 (M.D. Fla. 1976) . . . . . 7

Federal Communications Commission v. Beach Communications, Inc. 508 U.S. 307, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993) . . . . . 8

Heller v. Doe, 309 U.S. 312, 113 S.Ct. 2637, 125 L.Ed. 2d 257 (1993) . . . . . 8

Marina v. Leahy, 578 So.2d 382 (Fla. 3d DCA 1991) . . . . . 7

Nichols v. State, 177 So.2d 467 (Fla. 1965) . . . . . 1,2,4,5,6

Panama City Medical Diagnostic Limited v. Williams, 13 F.3d 1541 (11th Cir. 1994) . . . . . 8

Treiman v. Malmquist, 342 So.2d 972
(Fla. 1977) . . . . . 2,5,6,7

OTHER AUTHORITIES CITED:

Tampa Home Rule Charter §2.02 . . . . . 1,4,7

## STATEMENT OF THE CASE

The within action revolves around the constitutionality of the one year elector requirement imposed under §2.02 of the Tampa City Charter.

On January 17, 1995, Petitioner filed a Complaint challenging the constitutionality of the one-year elector requirement imposed under §2.02 of the Tampa City Charter. On January 19, 1995, a hearing was held before the Honorable Edward Ward on Petitioner's Motion for Temporary Injunction wherein the issue of the constitutionality of the one-year elector requirement was addressed at length. On January 20, 1995, Judge Ward issued a written Order wherein he denied the Petitioner's Motion for Temporary Injunction and held that, under the authority of Nichols v. State, 177 So.2d 467 (Fla. 1965), a one-year elector requirement is not unreasonable. (Petitioner's Appendix "A", page 41.) The court also incorporated into its Order, by reference, the findings of the court which were announced from the bench on January 19, 1995. The findings, which were announced from the bench, were as follows:

> The Court does find and it certainly is not disputed that the Plaintiff-Petitioner, Mr. Redner, is not or could not satisfy the City Charter requirement Section 2.02 that each member of City Council shall have been a resident and elector of the City for one year immediately preceding the commencement of the term of office for which elected.
>
> The Court finds that the Plaintiff has not demonstrated irreparable harm. While

it may be true that Mr. Redner is or may be thwarted in his immediate bid for public office, his position -- if I might borrow now from some medical vernacular -- can be likened into that of a temporary infirmity or acute inadequacy, as opposed to a chronic or terminal condition or insufficiency.

The Court further finds that the Plaintiff has not established a clear, legal right to the relief requested in that there has not been a demonstration of a substantial likelihood that the movant would be or is entitled to relief on the merits.

At this point the Court would cite for the record the only case on point which was the Nichols case at 177 So.2d 467 in which the Supreme Court articulated that a one-year elector requirement was not unreasonable.

In passing, the Court would note that the case of Treiman, T-R-E-I-M-A-N, although intriguing and interesting, certainly was ably distinguished on the facts from the case at bar.

The Court further finds that the public interest at this time would not be served by granting the injunction. Indeed the Petitioner does not seek to preserve the status quo, but urges this Court to order affirmative action by the Defendant-Supervisor, which could conceivably lead to havoc and chaos and serve to disrupt the orderly election process.

The citizens of the City of Tampa have spoken by way of a municipal charter.

> And in that instrument, the voters have articulated and approved a twofold requirement for those persons who aspire to positions of leadership through public office.
>
> The Plaintiff, Mr. Redner, fully satisfies one of the conditions precedent, that is, the residency requirement.
>
> However, through and as a result of Mr. Redner's own past volitional acts, which at the time were adjudged illegal, does not at this time possess the second prerequisite for qualifying for public office, that is, the concomitant provision of a one-year status as an elector.
>
> Inasmuch as the people of Tampa have spoken and have firmly in place what this Court considers reasonable and legitimate qualifications and requirements for those persons seeking public office, it is the decision of this Court to deny the Plaintiff's Motion for Temporary Injunction.
>
> The Court reserves on issues of attorney's fees and costs.

Petitioner subsequently took an appeal from Judge Ward's Order and, on May 12, 1995, the Second District Court of Appeal issued a per curiam affirmance. (Petitioner's Appendix "B", page 44.) [1]

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[1] The Petitioner's Appendix "B" erroneously reflects the date of this per curiam affirmance as May 12, 1997; in fact, the per curiam affirmance was issued on May 12, 1995.

On May 2, 1996, oral argument was held before the Honorable Sam Pendino on the Respondents' Amended Motion to Dismiss the underlying Complaint filed by Petitioner. At the oral argument, the parties once again addressed the constitutionality of §2.02 of the Tampa City Charter and, at said argument, Judge Pendino verbally ruled that he found the one-year elector requirement to be reasonable. On May 13, 1996, Judge Pendino issued a written Order granting the Respondents' Amended Motion to Dismiss the Complaint (Petitioner's Appendix "D", page 48) and, thereafter, Petitioner took another appeal to the Second District Court of Appeal. On appeal, the issue of the constitutionality of the one-year elector requirement was once again addressed at length and, on May 9, 1997, the Second District Court of Appeal issued a per curiam affirmance wherein the court cited to the dispositive case of Nichols, supra, in which the Florida Supreme Court held that a one year elector requirement is not unreasonable. (Petitioner's Appendix "E", page 50.)

## REASONS FOR DENYING THE WRIT

The Respondents, City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections of Hillsborough County, Florida, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, Joseph R. Redner, for the reasons set forth below.

### POINT I: THE IMPOSITION OF A ONE YEAR ELECTOR REQUIREMENT IS NOT UNCONSTITUTIONAL.

In Nichols v. State, 177 So.2d 467 (Fla. 1965), a case directly on point, the Supreme Court of Florida expressly held that it was not unreasonable for a statute to require that the city commissioners shall have been electors for at least one year immediately preceding their qualifying for office. Id. at 469. Accordingly, the Florida Supreme Court upheld the decision of the chancellor which found the statute to be valid.

The Petitioner attempts to extricate himself from the holding in the Nichols case by principally relying upon two cases, to wit, Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977) and Board of Commissioners of Sarasota v. Gustafson, 616 So.2d 1165 (Fla. 2d DCA 1993). Each of these cases, as discussed below, is clearly distinguishable from the matter at hand.

Treiman is distinguishable from the case sub judice in the following significant respects. First of all, in Treiman the statute at issue required that a candidate for judicial office have been registered to vote in the last preceding general election. Under the facts of Treiman, the candidate was required to have registered to vote more than 20 months before the candidate qualified to run for office. In the matter at hand, the duration for the elector requirement is only one year and, as the Supreme Court of Florida held in Nichols,

a one year duration for the elector requirement is reasonable.

Secondly, in Treiman the candidate at issue had in fact registered to vote approximately 20 months before he qualified to run for office. In the case sub judice, the Petitioner did not register to vote until only one month before the qualifying period expired.

Thirdly, Treiman does not overrule Nichols and, indeed, the two cases can be read in harmony with each other. Treiman does not state that a restraint on the elective process is prohibited; to the contrary, Treiman holds that reasonable controls may be imposed on the election process. 342 So.2d at 975. In Treiman, the court found that the requirement of being registered to vote 20 months in advance of the last preceding general election was unreasonable whereas in Nichols the court found that a one year elector requirement was reasonable. Accordingly, these two cases are not inconsistent.

Finally, Treiman is further distinguishable in that in Treiman the court stated that this "restriction applies solely to candidates for judicial office. No such similar restraint was placed on candidates for any other political office." 342 So.2d at 976. In the case at bar, the provision at issue is even handed and does not discriminatorily apply to only a single group of candidates.

The Gustafson case, upon which Petitioner heavily relies, is also distinguishable in a couple of significant respects. First and foremost, in Gustafson the provision at issue dealt with a two year durational residency requirement rather than the one year elector requirement which is at issue in the matter at hand. This is a critical difference. Secondly, in Gustafson, the court indicated that a durational requirement of less than two years would not necessarily be improper. Indeed, the court stated:

> It is the length of the durational residency requirement that determines which equal protection analysis will be applied. Accordingly, a fundamental right is not considered seriously infringed so as to require a strict scrutiny analysis unless the candidate durational residency requirement is deemed excessive. Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977); Marina v. Leahy, 578 So.2d 382 (Fla. 3d DCA 1991); Daves v. City of Longwood, 423 F.Supp. 593 (M.D. Fla. 1976). Conversely, a candidate durational residency requirement that is deemed reasonable is not considered to seriously infringe using the traditional equal protection analysis.

616 So.2d at 1167.

## POINT II: UNDER THE FACTS OF THIS CASE, THERE WAS NO NEED FOR AN EVIDENTIARY HEARING.

Contrary to Petitioner's argument, there was no need for an evidentiary hearing in this case for a few reasons.

First of all, there are no disputed facts. The Petitioner does not dispute that he failed to satisfy the one year elector requirement. The only issue which was the subject of the lower court action was the legal issue of whether the one year elector requirement, imposed under §2.02 of the Tampa Home Rule Charter, is constitutional.

Secondly, questions of pure law do not require an evidentiary hearing. The Florida Supreme Court has itself affirmed the granting of a motion to dismiss, without an evidentiary hearing, in adjudicating the merits of a constitutional issue where there was no disputed issues of fact. See City of Long Beach Resort v. Collins, 261 So.2d 498

(Fla. 1972).

Thirdly, and perhaps most significantly, there is no obligation on the part of the government to produce evidence to sustain the rationality of a statute or other legislative enactment. See Heller v. Doe, 309 U.S. 312, 113 S.Ct. 2637, 125 L.Ed. 2d 257 (1993); Federal Communications Commission v. Beach Communications, Inc., 508 U.S. 307, 113 S.Ct. 2096, 124 L.Ed. 2d 211 (1993); Panama City Medical Diagnostic Limited v. Williams, 13 F.3d 1541 (11th Cir.); Cafe 207, Inc. v. St. Johns County, 856 F.Supp. 641 (M.D. Fla. 1994).

## CONCLUSION

For all the aforesaid reasons, it is respectfully requested that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

Dated:
October 23, 1997

Jerry M. Gewirtz
Assistant City Attorney
Florida Bar No. 843865
5th Floor, City Hall
315 E. Kennedy Blvd.
Tampa, Florida 33602
813/223-8996
Counsel for Respondents
The City of Tampa, Florida,
and Pam Iorio, in her
official capacity as
Supervisor of Elections
Hillsborough County, Florida

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